

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

LOREN HOGAN,

Plaintiff,

Civ. Action No.
3:07-CV-0555 (DEP)

vs.

A.O. FOX MEMORIAL HOSPITAL, *et al.*

Defendants.

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF:

SCHWARTZ LAW FIRM
189 Main Street
Suite 301
Oneonta, NY 13820

DONALD J. SCHWARTZ, ESQ.

FOR DEFENDANT:

LEVENE, GOULDIN LAW FIRM
450 Plaza Drive
Vestal, NY 13850

MARIA E. LISI-MURRAY, ESQ.
DAVID F. MCCARTHY, ESQ.

DAVID E. PEEBLES
U.S. MAGISTRATE JUDGE

ORDER

Currently pending before the court is a motion by the remaining defendants in the action seeking dismissal of the claims set forth in plaintiff's amended complaint on a variety of bases. Dkt. No. 26. Oral

argument was conducted in connection with defendants' motion, which plaintiff has opposed, see Dkt. No. 28, on December 21, 2007. At the close of argument I rendered a bench decision finding that plaintiff's pendent state law intentional tort claims of false imprisonment, battery, assault, and intentional infliction of emotional distress are barred by the applicable statute of limitations, and further that plaintiff's claims against defendant Dawn Frair are subject to dismissal based on the lack of any allegations concerning her involvement in the conduct forming the basis for plaintiff's claims, but that defendants' motion should otherwise be denied in light of the requisite generous standard for determining a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure including, *inter alia*, as prescribed under *Bell Atlantic Corp. v. Twombly*, ___ U.S. ___, 127 S. Ct. 1955, 1964 (2007) and *Iqbal v. Hasty*, 490 F.3d 143, 157-58 (2d Cir. 2007).

Based upon the foregoing, and incorporating herein by reference the court's bench decision, it is hereby

ORDERED as follows:

- 1) Defendants' motion to dismiss plaintiff's complaint, Dkt. No. 26, is GRANTED, in part, and plaintiff's fourth, fifth, sixth and seventh causes of action as against all defendants, and all of plaintiff's claims

against defendant Dawn Frair, are hereby DISMISSED.

- 2) With the exception of the foregoing, defendants' motion to dismiss, Dkt. No. 26, is hereby DENIED.
- 3) The clerk is directed to promptly forward copies of this order to the parties pursuant to the court's local rules.

Dated: December 28, 2007
Syracuse, NY



David E. Peebles
U.S. Magistrate Judge